# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

HAROLD ROGERS	)
Claimant	)
VS.	)
	) Docket No. 228,803
SERVICE TRUCKING, INC.	)
Respondent	)
AND	)
	)
KANSAS TRUCKERS RISK MANAGEMENT	)
Insurance Carrier	)

### ORDER

Claimant appeals from an award of penalties entered by Administrative Law Judge Bruce E. Moore on July 21, 1998.

## **ISSUES**

The Administrative Law Judge ordered respondent to pay \$50 in penalties, representing \$25 each for two unpaid medical bills. He found claimant had failed to comply with statutory prerequisites for penalties for the remaining bills. On appeal, claimant contends additional penalties should be ordered. Respondent contends the Board does not have jurisdiction of the appeal at this time and, if the Board does, respondent asks that the Order be affirmed.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the award by the ALJ should be affirmed.

The Appeals Board does have jurisdiction over this appeal. An award of penalties is treated the same as a final award. *Waln v. Clarkson Constr. Co.*, 18 Kan. App. 2d 729, 861 P.2d 1355 (1993).

On January 26, 1998, the ALJ entered an Order requiring respondent to provide medical treatment for claimant's right shoulder and directing that medical expenses incurred before October 24, 1997, be paid as unauthorized medical expense and expenses incurred after that date be paid as authorized medical expense. The Order also required respondent to pay temporary total disability benefits if claimant is taken off work by an authorized treating physician.

On January 29, 1998, claimant sent by certified mail a general demand for payment of the ordered benefits.

On March 23, 1998, claimant sent an additional demand letter, again by certified mail. In this letter, claimant noted Dr. Fleske had scheduled claimant for surgery in April and, therefore, demanded payment of temporary total disability benefits. This second letter also specified demand was being made for payment of two medical bills, one in the amount of \$90.50 from Dr. Fleske's office to be paid as unauthorized and \$45 in authorized medical expense incurred October 27, 1997. Subsequent letters sent by claimant's counsel on April 9, April 13, April 16, April 22, April 24, May 14, May 15, and May 21, 1998, for other medical expenses and/or mileage, were not sent by certified mail.

K.S.A. 44-512a requires, as a prerequisite to penalties, that claimant first serve by registered mail a written demand setting forth the specific items claimed to be past due. The ALJ found only the demand of March 23, 1998, satisfied those requirements. The Board agrees the initial demand of January 29, 1998, was too general, it did not specify which medical bills were past due and it appears there was, in fact, no temporary total disability due at that time. None of the other letters, all demanding payment of other medical bills or medical mileage after March 23, 1998, were sent by registered or certified mail.

K.S.A. 44-512a provides that the penalty is to be the larger of \$25 per medical bill or 10 percent. In this case, the \$25 per bill applies. There apparently is no issue concerning the temporary total disability payments. The Order should, therefore, be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bruce E. Moore on July 21, 1998, should be, and the same is hereby, affirmed.

# Dated this \_\_\_\_ day of October 1998. BOARD MEMBER BOARD MEMBER

**BOARD MEMBER** 

c: M. John Carpenter, Great Bend, KS J. Scott Gordon, Overland Park, KS Bruce E. Moore, Administrative Law Judge Philip S. Harness, Director

IT IS SO ORDERED.